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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/058,645	01/28/2002	Anthony Walter Anson	105005-0055C1	5057

7590

05/24/2004

INTELLECTUAL PROPERTY DEPT.  
DEWITT ROSS AND STEVENS  
8000 EXCELSIOR DRIVE, 4TH FLOOR  
MADISON, WI 53717-1914

EXAMINER
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THALER, MICHAEL H

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 05/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/058,645	<b>Applicant(s)</b> ANSON ET AL.	
	<b>Examiner</b> Michael Thaler	<b>Art Unit</b> 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 24-34, 36-43 and 46-52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 39, 47-49 and 51 is/are allowed.
- 6) ☒ Claim(s) 24-29, 31-34, 36-38, 40-43, 46, 50 and 52 is/are rejected.
- 7) ☐ Claim(s) 30 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Claims 24-29, 31-34 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mazzocchi et al. (2002/0138095). Mazzocchi et al., in figures 5A and 5B, show wires which are expandable to form an occluding anchor part 64 having turns of cycloidal form (figure 5B) which are substantially coplanar. Mazzocchi et al. fail to disclose the stent formed from a single length of wire. However, the phrase "formed from a single length of wire" is considered to be a product by process limitation. It would have been obvious that the Mazzocchi et al. stent could have been formed from a single length of wire which is then cut into the individual strands referred to in paragraphs [0034] and [0035]. The patentability of a product does not depend on its method of production. If the product in a product by process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process (MPEP 2113). In this case the product of the stent is the same as or obvious from a product of the prior art. Further, it was well known in this art that implantable members may be formed from a single length of wire so that they are easily manufactured. That is, a wire stent may easily be formed of a single length which is then cut into a plurality of strands rather than initially forming a plurality of strands

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individually. It would have been obvious to so form the Mazzocchi et al. stent so that it too would have this advantage. As to claim 27, Mazzocchi et al. show another anchor part 64 and linking part 62. As to claim 32, note paragraph [0078] of Mazzocchi et al. As to claim 33, Mazzocchi et al. fail to disclose the specific coating of a protein. However, it was well known in this art that proteins are used as pharmacological agents. Using a protein as pharmacological agent of Mazzocchi et al. would have been obvious for this reason. As to claim 34, Mazzocchi et al. fail to disclose a roughened surface on the wire. However, it was well known in this art that implanted articles in the body may have roughened surfaces in order to better retain pharmacological agents on them. Using a roughened surface on the wire of Mazzocchi et al. would have been obvious so that it too would have this advantage. The above well known in the art statements are taken to be admitted prior art because applicant failed to traverse the examiner's assertions (M.P.E.P. 2144.03). As to claim 50, Mazzocchi et al., in the embodiment of figures 5A and 5B, fail to show a catheter, a placement member and a releasable connection means. However, Mazzocchi et al., in the embodiment of figures 6A-6C and 8 and described in paragraphs [0084] and [0085], teach that the implantable member may be conveniently delivered into the body by a catheter, a

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placement member (the elongate metal, flexible shaft) and a releasable connection means (at 90). It would have been obvious to use these members to deliver the implantable member of figures 5A and 5B so that it too would have this advantage.

Claims 36-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Kamiya et al. (5,192,301). Kamiya et al., in figure 29, show a releasable connector (the right portion of plug 21'' including the thin neck at the end of the lead line for reference numeral 21'') for releasably interconnecting first part 23 to second part (the bulbous portion of plug 21'' left of the thin neck) comprising first connector region (the flange portion which is wrapped around ball shaped member 28) which has a shape memory effect (col. 8, lines 52-55) and second connector region (the thin neck). As to claim 37, Webster's II New Riverside Dictionary defines "bush" as "To furnish or line with a bushing." and defines "bushing" as "A fixed or removable lining used to constrain, guide or reduce friction." The Kamiya et al. flange portion which is wrapped around ball shaped member 28 is used to constrain and thus meets this broad definition to the same extent that member 30 of the application meets it.

Claims 40-43 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mazzocchi et al. (2002/0138095) in view of Kamiya et al. (5,192,301). Mazzocchi et al. fail to disclose

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the connector formed of temperature triggered shape memory material. However, Kamiya et al. teaches that a connector between the push rod and an implantable occlusion device should be formed of this material so that it can be easily disconnected when it reaches a certain temperature (col. 8, lines 45-55). It would have been obvious to so form the Mazzocchi et al. connector so that it too has this advantage.

Claim 52 is rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Mazzocchi et al. (2002/0138095). Mazzocchi et al., in figures 5A and 5B, show a wire which is expandable to form an occluding anchor part 64 having turns of cycloidal form (figure 5B) which are substantially coplanar. Alternatively, the turns are obviously substantially coplanar since any deviation from a plane is small as compared to the overall shape of the device. The occluding anchor part 64 is "at a terminal end of the stent" as broadly claimed since the terminal end is considered to be the entire right end portion of the stent as seen in figure 5A which includes the anchor part 64.

Claim 30 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 39, 47-49 and 51 are allowed.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note col. 5, lines 17-18 of Pulnev et al. (6,309,415).

Applicant's arguments filed April 6, 2004 have been fully considered but they are not persuasive for the reasons set forth above. In addition, as to claim 36, the Komiya et al. second connector region is secured to the first part. Therefore, it is adapted (by its structure) to be secured to the first part.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (703) 308-2981. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Milano can be reached on (703)308-2496. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

mht  
5/18/04



MICHAEL THALER  
PRIMARY EXAMINER  
ART UNIT 3731